

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 01/05/2009 (Per: PJK)



Appendix A ... Pt. 04 of 06



The 2007 drafting file for LRB-3960

has been transferred to the drafting file for

2009 LRB-1308

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 ✓ 301.046 (4) (a) 1. "Member of the family" means spouse, state-registered
2 domestic partner under s. 770.05, child, sibling, parent or legal guardian.

3 ✓ SECTION 83. 301.048 (4m) (a) 1. of the statutes is amended to read:

4 ✓ 301.048 (4m) (a) 1. "Member of the family" means spouse, state-registered
5 domestic partner under s. 770.05, child, sibling, parent or legal guardian.

6 ✓ SECTION 84. 301.38 (1) (a) of the statutes is amended to read:

7 ✓ 301.38 (1) (a) "Member of the family" means spouse, state-registered domestic
8 partner under s. 770.05, child, sibling, parent or legal guardian.

9 ✓ SECTION 85. 301.46 (3) (a) 1. of the statutes is amended to read:

10 ✓ 301.46 (3) (a) 1. "Member of the family" means spouse, state-registered
11 domestic partner under s. 770.05, child, parent, sibling or legal guardian.

12 ✓ SECTION 86. 302.105 (1) (a) of the statutes is amended to read:

13 ✓ 302.105 (1) (a) "Member of the family" means spouse, state-registered
14 domestic partner under s. 770.05, child, sibling, parent or legal guardian.

15 ✓ SECTION 87. 304.06 (1) (a) 1. of the statutes is amended to read:

16 ✓ 304.06 (1) (a) 1. "Member of the family" means spouse, state-registered
17 domestic partner under s. 770.05, child, sibling, parent or legal guardian.

18 ✓ SECTION 88. 304.09 (1) (a) of the statutes is amended to read:

19 ✓ 304.09 (1) (a) "Member of the family" means spouse, state-registered domestic
20 partner under s. 770.05, child, sibling, parent or legal guardian.

21 ✓ SECTION 89. 321.62 (11) (a) of the statutes, as affected by 2007 Wisconsin Act
22 200 is amended to read:

23 ✓ 321.62 (11) (a) No eviction may be made during the period of state active duty
24 in respect to any premises for which the agreed rent does not exceed the amount
25 specified in 50 USC App. 531. occupied chiefly for dwelling purposes by the spouse,

children, state-registered domestic partner under s. 770.05, or other dependents of a service member who is in state active duty, except upon order of a court in an action affecting the right of possession.

✓ **SECTION 90.** 342.14 (3m) of the statutes, as affected by 2007 Wisconsin Act 33, is amended to read:

✓ **342.14 (3m)** Upon filing an application under sub. (1) or (3), a supplemental title fee of \$7.50 by the owner of the vehicle, except that this fee shall be waived with respect to an application under sub. (3) for transfer of a decedent's interest in a vehicle to his or her surviving spouse or state-registered domestic partner under s. 770.05. The fee specified under this subsection is in addition to any other fee specified in this section. This subsection does not apply to an application for a certificate of title for a neighborhood electric vehicle.

13 **SECTION 91.** 342.17 (4) (b) 1. (intro.) and c. and 4. of the statutes are amended to read:

✓ 342.17 (4) (b) 1. (intro.) The department shall transfer the decedent's interest in any vehicle to his or her surviving spouse or state-registered domestic partner under s. 770.05 upon receipt of the title executed by the surviving spouse or domestic partner and a statement by the spouse or domestic partner which shall state:

✓ c. That the spouse or domestic partner is personally liable for the decedent's debts and charges to the extent of the value of the vehicle, subject to s. 859.25.

✓ 4. The limit in subd. 3. does not apply if the surviving spouse or domestic partner is proceeding under s. 867.03 (1g) and the total value of the decedent's property subject to administration in the state, including the vehicles transferred under this paragraph, does not exceed \$50,000.

✓ **SECTION 92.** 614.10 (2) (c) 3. of the statutes is amended to read:

✓ 614.10 (2) (c) 3. Notwithstanding s. 614.01 (1) (a) 2., on the application of an employee specified in subd. 2., provide insurance benefits to the employee's spouse or state-registered domestic partner under s. 770.05 or a child of the employee who receives financial services or support from the employee.

SECTION 93. 700.19 (2m) of the statutes is created to read:

✓ 700.19 (2m) DOMESTIC PARTNERS. If persons named as owners in a document of title, transferees in an instrument of transfer, or buyers in a bill of sale are described in the document, instrument, or bill of sale as state-registered domestic partners under s. 770.05, or are in fact state-registered domestic partners under s. 770.05, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument, or bill of sale. ✓

✓ **SECTION 94.** Chapter 770 of the statutes is created to read:

✓ CHAPTER 770

DOMESTIC PARTNERSHIP REGISTRY

770.01 Definitions. In this chapter:

✓ (1) "Domestic partner" means a state-registered domestic partner. ✓

✓ (2) "Secretary" means the secretary of state. ✓

770.05 Criteria for entering into a state-registered domestic partnership. Two individuals may enter into a state-registered domestic partnership if they satisfy all of the following criteria:

✓ (1) Each individual is at least 18 years old and capable of consenting to the domestic partnership. ✓

✓(2) Neither individual is married to, or in a state-registered domestic partnership with, another individual. ✓

1 (3) The 2 individuals share a common residence. Two individuals may share
2 a common residence even if any of the following applies: ✓

3 (a) Only one of the individuals has legal ownership of the residence. ✓

4 (b) One or both of the individuals have one or more additional residences not
5 shared with the other individual. ✓

6 (c) One of the individuals leaves the common residence with the intent to
7 return. ✓

8 (4) The 2 individuals are not nearer of kin to each other than 2nd cousins,
9 whether of the whole or half blood or by adoption. ✓

10 (5) Either of the following is true: ✓

11 (a) Both individuals are members of the same sex. ✓

12 (b) At least one of the individuals is 62 years of age or older. ✓

13 **770.07 Procedure for entering into a state-registered domestic**
14 **partnership.** (1) FILE DECLARATION. Two individuals who meet the criteria under
15 s. 770.05 may enter into a state-registered domestic partnership by filing a
16 completed declaration of state-registered domestic partnership form with the
17 secretary and paying the filing fee established under s. 770.18 (3) (a). The
18 declaration must be signed by both individuals and notarized. ✓

19 (2) SECRETARY ISSUE CERTIFICATE. Upon receiving a completed, signed, and
20 notarized declaration of state-registered domestic partnership and the filing fee
21 established under s. 770.18 (3) (a), the secretary shall register the declaration, as
22 provided under s. 770.18 (1), and issue to each individual named on the declaration
23 a certificate of state-registered domestic partnership. ✓

24 **770.10 Terminating a state-registered domestic partnership.** (1) FILE
25 NOTICE OF TERMINATION; AFFIDAVIT. (a) A party to a state-registered domestic

1 partnership may terminate the state-registered domestic partnership by filing a
2 completed notice of termination of state-registered domestic partnership form with
3 the secretary and paying the filing fee established under s. 770.18 (3) (a). The notice
4 must be signed by one or both domestic partners and notarized.

5 (b) If the notice under par. (a) is signed by only one of the domestic partners,
6 that individual must also file with the secretary an affidavit stating either of the
7 following: ✓

8 1. That the other domestic partner has been served in writing, in the manner
9 provided under s. 801.11, that a notice of termination of state-registered domestic
10 partnership is being filed with the secretary.

11 2. That the domestic partner seeking termination has been unable to locate the
12 other domestic partner after making reasonable efforts and that notice to the other
13 domestic partner has been made by publication as provided in sub. (2).

14 (2) PUBLISH NOTICE. ✓ If a domestic partner who is seeking to terminate the
15 state-registered domestic partnership is unable to find the other domestic partner
16 after making reasonable efforts, the domestic partner seeking termination may
17 provide notice by publication in a newspaper of general circulation in the county in
18 which the residence most recently shared by the domestic partners is located. The
19 notice need not be published more than one time. ✓

20 (3) SECRETARY ISSUES CERTIFICATE. ✓ Upon receiving a completed, signed, and
21 notarized notice of termination of state-registered domestic partnership, the
22 affidavit under sub. (1) (b) if required, and the filing fee established under s. 770.18
23 (3) (a), the secretary shall register the notice of termination of state-registered
24 domestic partnership, as provided under s. 770.18 (1), and issue to each domestic
25 partner a certificate of termination of state-registered domestic partnership. ✓

1 (4) WHEN TERMINATION EFFECTIVE. (a) Except as provided in par. (b), the
2 termination of a state-registered domestic partnership is effective 90 days after the
3 notice of termination of state-registered domestic partnership or notice of
4 termination of state-registered domestic partnership and affidavit are filed under
5 sub. (1).

6 (b) If a party to a state-registered domestic partnership enters into a marriage
7 that is recognized as valid in this state, the state-registered domestic partnership
8 is automatically terminated on the date of the marriage.

9 **770.15 Forms for declaration and notice of termination. (1)**

10 PREPARATION. The secretary shall prepare forms entitled "declaration of
11 state-registered domestic partnership" and "notice of termination of
12 state-registered domestic partnership" and any other forms that are necessary to
13 meet the requirements of this chapter.

14 (2) DISTRIBUTION. The secretary shall distribute the forms under this section
15 to each county clerk. The forms shall be available to the public at the office of the
16 secretary, at any county clerk's office, and on the Internet at a site maintained by the
17 secretary.

18 **770.18 State domestic partnership registry; fees. (1)** REGISTRATION OF
19 DECLARATIONS AND NOTICES OF TERMINATION. The state domestic partnership registry
20 is created in the office of the secretary. The secretary shall register and permanently
21 maintain in the state domestic partnership registry all of the following documents
22 or records of all of the following documents:

23 (a) Declarations of state-registered domestic partnership filed with the
24 secretary under s. 770.07 (1).

1 (b) Certificates of state-registered domestic partnership issued by the
2 secretary under s. 770.07 (2).

3 (c) Notices of termination of state-registered domestic partnership and
4 affidavits filed with the secretary under s. 770.10 (1).

5 (d) Certificates of termination of state-registered domestic partnership issued
6 by the secretary under s. 770.10 (3).

7 (2) COPIES TO STATE REGISTRAR. The secretary shall provide the state registrar
8 of vital statistics with copies of declarations of state-registered domestic partnership
9 filed with the secretary under s. 770.07 (1) and with copies of notices of termination
10 of state-registered domestic partnership and affidavits filed with the secretary
11 under s. 770.10 (1).

12 (3) SETTING FEES; RULES. (a) The secretary shall set, by rule, reasonable fees
13 for filing a declaration of state-registered domestic partnership and for filing a notice
14 of termination of state-registered domestic partnership. The fees shall be calculated
15 to cover the secretary's costs, but no fee may exceed \$50. Fees collected under ss.
16 770.07 and 770.10 shall be credited to the appropriation account under s. 20.575 (1)

17 (g).

18 (b) The secretary shall promulgate any other rules necessary for the
19 implementation and administration of the state domestic partnership registry.

20 SECTION 95. 851.08 of the statutes is created to read:

21 851.08 Domestic partner. "Domestic partner" means a state-registered
22 domestic partner under s. 770.05.

23 SECTION 96. 851.295 of the statutes is created to read:

24 851.295 Surviving domestic partner. (1) Subject to sub. (2), "surviving
25 domestic partner" means a person who was in a domestic partnership registered with

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1 the secretary of state under s. 770.05 with the decedent, at the time of the decedent's
2 death.

3 (2) "Surviving domestic partner" does not include any of the following:

4 (a) An individual who obtains or consents to a termination of domestic
5 partnership from the decedent if the secretary of state fails to issue a valid certificate
6 of termination of domestic partnership under s. 770.10 (3), unless the individual and
7 the decedent subsequently register as domestic partners under s. 770.05 with the
8 secretary of state or they subsequently hold themselves out as domestic partners.

9 (b) An individual whose domestic partnership with the decedent has not been
10 terminated by the secretary of state issuing a valid certificate of termination under
11 s. 770.10 (3) and who subsequently registers a domestic partnership with a 3rd
12 individual with the secretary of state under s. 770.05 or who participates in a
13 marriage ceremony with a 3rd individual.

14 (c) An individual who was party to a valid proceeding concluded by an order
15 purporting to terminate all property rights based on the domestic partnership.

16 SECTION 97. 852.01 (1) (a) (intro.), 1., 2. (intro.) and b., (b), (c), (d), and (f) (intro.)
17 of the statutes are amended to read:

18 852.01 (1) (a) (intro.) To the spouse or domestic partner:

19 1. If there are no surviving issue of the decedent, or if the surviving issue are
20 all issue of the surviving spouse or surviving domestic partner and the decedent, the
21 entire estate.

22 2. (intro.) If there are surviving issue one or more of whom are not issue of the
23 surviving spouse or surviving domestic partner, one-half of decedent's property
24 other than the following property:

1 b. The decedent's interest in property held equally and exclusively with the
2 surviving spouse or surviving domestic partner as tenants in common.

3 (b) To the issue, per stirpes, the share of the estate not passing to the spouse
4 or surviving domestic partner, under par. (a), or the entire estate if there is no
5 surviving spouse or surviving domestic partner.

6 (c) If there is no surviving spouse, surviving domestic partner, or issue, to the
7 parents.

8 (d) If there is no surviving spouse, surviving domestic partner, issue, or parent,
9 to the brothers and sisters and the issue of any deceased brother or sister per stirpes.

10 (f) (intro.) If there is no surviving spouse, surviving domestic partner, issue,
11 parent, or issue of a parent, to the grandparents and their issue as follows:

12 ✓ SECTION 98. 852.09 of the statutes is amended to read:

13 ✓ 852.09 **Assignment of home to surviving spouse or surviving domestic**
14 **partner**. If the intestate estate includes an interest in a home, assignment of that
15 interest to the surviving spouse or surviving domestic partner is governed by s.
16 861.21.

17 ✓ SECTION 99. 853.11 (2m) and (3) of the statutes are amended to read:

18 ✓ 853.11 (2m) **PREMARITAL OR PREDOMESTIC PARTNERSHIP WILL**. Entitlements of a
19 surviving spouse or surviving domestic partner under a decedent's will that was
20 executed before marriage to the surviving spouse or registration of the domestic
21 partnership under s. 770.05 to the surviving domestic partner are governed by s.
22 853.12. 770.07

23 ✓ (3) **TRANSFER TO FORMER SPOUSE OR FORMER DOMESTIC PARTNER**. A transfer under
24 a will to a former spouse or former domestic partner is governed by s. 854.15.

25 ✓ SECTION 100. 853.12 (title) of the statutes is amended to read:

1 ✓ 853.12 (title) Premarital will or predomestic partnership will.

2 ✓ SECTION 101. 853.12 (1), (2) (intro.) and (a), (3) (a) and (b) and (4) (a) of the
3 statutes are amended to read:

4 ✓ 853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER.

5 Subject to sub. (3), if the testator married the surviving spouse or registered a
6 domestic partnership under s. 770.05 with the surviving domestic partner after the
7 testator executed his or her will, the surviving spouse or surviving domestic partner
8 is entitled to a share of the probate estate.

9 (2) VALUE OF SHARE. (intro.) The value of the share under sub. (1) is the value
10 of the share that the surviving spouse or surviving domestic partner would have
11 received had the testator died with an intestate estate equal to the value of the
12 testator's net estate, but the value of the net estate shall first be reduced by the value
13 of all of the following:

14 (a) All devises to or for the benefit of the testator's children who were born
15 before the marriage to the surviving spouse or the domestic partnership with the
16 surviving domestic partner and who are not also the children of the surviving spouse
17 or surviving domestic partner.

18 (3) (a) It appears from the will or other evidence that the will was made in
19 contemplation of the testator's marriage to the surviving spouse or domestic
20 partnership with the surviving domestic partner.

21 (b) It appears from the will or other evidence that the will is intended to be
22 effective notwithstanding any subsequent marriage or domestic partnership, or
23 there is sufficient evidence that the testator considered revising the will after
24 marriage or domestic partnership but decided not to.

(4) (a) Amounts received by the surviving spouse under s. 861.02 and devised made by will to the surviving spouse or surviving domestic partner are applied first.

SECTION 102. 859.25 (1) (g) of the statutes is amended to read:

859.25 (1) (g) Property assigned to the surviving spouse or surviving domestic partner under s. 861.41.

SECTION 103. 861.21 (title) of the statutes is amended to read:

861.21 (title) **Assignment of home to surviving spouse or surviving domestic partner.**

SECTION 104. 861.21 (1) (b) of the statutes, as affected by 2007 Wisconsin Act 11, is amended to read:

861.21 (1) (b) "Home" means any dwelling in which the decedent had an interest and that at the time of the decedent's death the surviving spouse occupies or intends to occupy. If there are several such dwellings, any one may be designated by the surviving spouse or surviving domestic partner. "Home" includes a house, a mobile home, a manufactured home, a duplex or multiple apartment building one unit of which is occupied by the surviving spouse or surviving domestic partner and a building used in part for a dwelling and in part for commercial or business purposes. "Home" includes all of the surrounding land, unless the court sets off part of the land as severable from the remaining land under sub. (5).

SECTION 105. 861.21 (2), (4) and (5) of the statutes are amended to read:

861.21 (2) DECEDENT'S PROPERTY INTEREST IN HOME. Subject to subs. (4) and (5), if a married or domestic partnership decedent has a property interest in a home, the decedent's entire interest in the home shall be assigned to the surviving spouse or surviving domestic partner if the surviving spouse or surviving domestic partner petitions the court requesting such a distribution and if a governing instrument does

or surviving domestic partner

1 not provide a specific transfer of the decedent's interest in the home to someone other
2 than the surviving spouse or surviving domestic partner. The surviving spouse or
3 surviving domestic partner shall file the petition within 6 months after the
4 decedent's death, unless the court extends the time for filing.

5 (4) PAYMENT BY SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER. The court
6 shall assign the interest in the home under sub. (2) to the surviving spouse or
7 surviving domestic partner upon payment of the value of the decedent's interest in
8 the home that does not pass to the surviving spouse or surviving domestic partner
9 under intestacy or under a governing instrument. Payment shall be made to the
10 fiduciary holding title to the interest. The surviving spouse or surviving domestic
11 partner may use assets due him or her from the fiduciary to satisfy all or part of the
12 payment in kind. Unless the court extends the time, the surviving spouse or
13 surviving domestic partner shall have one year from the decedent's death to pay the
14 value of the assigned interest. *→ or surviving domestic partner*

15 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the surviving
16 spouse *or* of any interested person that part of the land is not necessary for dwelling
17 purposes and that it would be inappropriate to assign all of the surrounding land as
18 the home under sub. (2), the court may set off for the home as much of the land as
19 is necessary for a dwelling. In determining how much land should be set off, the court
20 shall take into account the use and marketability of the parcels set off as the home
21 and the remaining land.

22 (22) SECTION 106. 861.31 (1m), (2) *g* and (4) (intro.) and (b) of the statutes are
23 amended to read:

24 (24) 861.31 (1m) The court may, without notice or on such notice as the court
25 directs, order payment by the personal representative or special administrator of an

1 allowance as the court determines necessary or appropriate for the support of the
2 surviving spouse or surviving domestic partner and any minor children of the
3 decedent during the administration of the estate. The court shall consider the size
4 of the probate estate, other resources available for support, the existing standard of
5 living, and any other factors it considers relevant.

6 (2) The court may order that an allowance be made to the spouse or surviving
7 domestic partner for support of the spouse or surviving domestic partner and any
8 minor children of the decedent, or that separate allowances be made to the spouse
9 or surviving domestic partner and to the minor children of the decedent or their
10 guardian, if any, if the court finds separate allowances advisable. If there is no
11 surviving spouse or surviving domestic partner, the court may order that an
12 allowance be made to the minor children of the decedent or to their guardian, if any.

13 (4) (intro.) The court may order that the allowance be charged against income
14 or principal, either as an advance or otherwise, but the court may not order that an
15 allowance for support of minor children of the decedent be charged against the
16 income or principal interest of the surviving spouse or surviving domestic partner.

17 The court may order that the allowance for support of the surviving spouse, spouse
18 or surviving domestic partner, not including any allowance for support of minor
19 children of the decedent, be applied in satisfaction of any of the following:

20 (b) Any right of the surviving spouse or surviving domestic partner to elect
21 under s. 861.02.

22 **SECTION 107.** 861.33 (title) of the statutes is amended to read:

23 **861.33 (title) Selection of personalty by surviving spouse or surviving**
24 **domestic partner.**

insert before plain comma

1 ✓ SECTION 108. 861.33 (1) (a) (intro.) and 1. and (b) of the statutes are amended ✓
2 to read: ✓

3 SECTION 109. 861.33 (1) (a) (intro.) of the statutes is amended to read:

4 ✓ 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and
5 distributions, the surviving spouse or surviving domestic partner may file with the
6 court a written selection of the following personal property, which shall then be
7 transferred to the spouse or domestic partner by the personal representative:

8 1. Wearing apparel and jewelry held for personal use by the decedent or the
9 surviving spouse or surviving domestic partner;

10 (b) The selection in par. (a) may not include items specifically bequeathed
11 except that the surviving spouse or surviving domestic partner may in every case
12 select the normal household furniture, furnishings, and appliances necessary to
13 maintain the home. For this purpose antiques, family heirlooms, and collections that
14 are specifically bequeathed are not classifiable as normal household furniture or
15 furnishings.

16 ✓ SECTION 110. 861.35 (title) of the statutes is amended to read: ✓

17 ✓ 861.35 (title) **Special allowance for support of spouse or domestic**
18 **partner and support and education of minor children.**

19 SECTION 111. 861.35 (1m), (2), (3) (a) and (4) of the statutes are amended to
20 read:

21 ✓ 861.35 (1m) If the decedent is survived by a spouse, domestic partner, or by
22 minor children, the court may order an allowance for the support and education of
23 each minor child until he or she reaches a specified age, not to exceed 18, and for the
24 support of the spouse or domestic partner. This allowance may be made whether the
25 estate is testate or intestate. If the decedent is not survived by a spouse or domestic

1 partner, the court also may allot directly to the minor children household furniture,
2 furnishings, and appliances. The court may not order an allowance under this
3 section if any of the following applies:

4 (a) The decedent has amply provided for each minor child and for the spouse
5 or domestic partner by the transfer of probate or nonprobate assets, or support and
6 education have been provided for by any other means.

7 (b) In the case of minor children, the surviving spouse or surviving domestic
8 partner is legally responsible for support and education and has ample means to
9 provide them in addition to his or her own support.

10 (c) In the case of the surviving spouse or surviving domestic partner, he or she
11 has ample means to provide for his or her support.

12 (2) The court may set aside property to provide an allowance and may appoint
13 a trustee to administer the property, subject to the continuing jurisdiction of the
14 court. If a child dies or reaches the age of 18, or if at any time the property held by
15 the trustee is no longer required for the support of the spouse or domestic partner or
16 the support and education of the minor child, any remaining property is to be
17 distributed by the trustee as the court orders in accordance with the terms of the
18 decedent's will or to the heirs of the decedent in intestacy or to satisfy unpaid claims
19 of the decedent's estate.

20 (3) (a) The effect on claims under s. 859.25. The court shall balance the needs
21 of the spouse, domestic partner, or minor children against the nature of the creditors'
22 claims in setting the amount allowed under this section.

23 (4) The court may order that the allowance to the surviving spouse or surviving
24 domestic partner, not including any allowance for the support and education of minor
25 children, be applied in satisfaction of any of the following:

1 (a) Any entitlement of the surviving spouse or surviving domestic partner
2 under s. 853.12.

3 (b) Any right of the surviving spouse or surviving domestic partner to elect
4 under s. 861.02 (1).

5 **SECTION 112.** 861.41 of the statutes is amended to read:

6 **861.41 Exemption of property to be assigned to surviving spouse or**
7 **surviving domestic partner.** (1) After the amount of claims against the estate
8 has been ascertained, the surviving spouse or surviving domestic partner may
9 petition the court to set aside as exempt from the claims of creditors under s. 859.25
10 (1) (h) an amount of property reasonably necessary for the support of the spouse or
11 domestic partner, not to exceed \$10,000 in value, if it appears that the assets are
12 insufficient to pay all claims and allowances and still leave the surviving spouse or
13 surviving domestic partner such an amount of property in addition to selection and
14 allowances.

15 (2) The court shall grant the petition if it determines that an assignment ahead
16 of creditors is reasonably necessary for the support of the spouse or domestic partner.
17 In determining the necessity and the amount of property to be assigned, the court
18 must take into consideration the availability of a home to the surviving spouse or
19 surviving domestic partner and all other assets and resources available for support.

20 **SECTION 113.** 867.01 (1) (b) and (3) (f) of the statutes are amended to read:

21 **867.01 (1) (b)** Whenever the estate, less the amount of the debts for which any
22 property in the estate is security, does not exceed \$50,000 in value and the decedent
23 is survived by a spouse or domestic partner, or one or more minor children or both.

24 **(3) (f) Order.** If the court is satisfied that the estate may be settled under this
25 section, after 30 days have elapsed since notice to the department of health services

1 under par. (d), if that notice is required, the court shall assign the property to the
2 persons entitled to it. If the estate may be settled under sub. (1) (b), any property not
3 otherwise assigned shall be assigned to the surviving spouse or surviving domestic
4 partner, or minor children or both as an allowance under s. 861.31. The court shall
5 order any person indebted to or holding money or other property of the decedent to
6 pay the indebtedness or deliver the property to the persons found to be entitled to
7 receive it. The court shall order the transfer of interests in real estate, stocks or
8 bonds registered in the name of the decedent, the title of a licensed motor vehicle, or
9 any other form of property. If the decedent immediately prior to death had an estate
10 for life or an interest as a joint tenant in any property in regard to which a certificate
11 of termination in accordance with s. 867.04 has not been issued, the order shall set
12 forth the termination of that life estate or the right of survivorship of any joint
13 tenant. Every tract of real property in which an interest is assigned or terminated
14 or which is security for a debt in which an interest is assigned or terminated shall
15 be specifically described.

NOTE: NOTE: Par. (f) is shown as amended eff. 7-1-08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-08 it reads: NOTE:

16 (f) *Order.* If the court is satisfied that the estate may be settled under this section, after 30 days have
17 elapsed since notice to the department of health and family services under par. (d), if that notice is
18 required, the court shall assign the property to the persons entitled to it. If the estate may be settled under
19 sub. (1) (b), any property not otherwise assigned shall be assigned to the surviving spouse or minor
20 children or both as an allowance under s. 861.31. The court shall order any person indebted to or holding
21 money or other property of the decedent to pay the indebtedness or deliver the property to the persons
22 found to be entitled to receive it. The court shall order the transfer of interests in real estate, stocks or
23 bonds registered in the name of the decedent, the title of a licensed motor vehicle, or any other form of
24 property. If the decedent immediately prior to death had an estate for life or an interest as a joint tenant
25 in any property in regard to which a certificate of termination in accordance with s. 867.04 has not been
26 issued, the order shall set forth the termination of that life estate or the right of survivorship of any joint
27 tenant. Every tract of real property in which an interest is assigned or terminated or which is security for
28 a debt in which an interest is assigned or terminated shall be specifically described.

29 ✓ SECTION 114. 895.04 (2) and (6) of the statutes are amended to read: ✓

30 ✓ 895.04 (2) If the deceased leaves surviving a spouse or state-registered ✓
31 domestic partner under s. 770.05, and minor children under 18 years of age with
32 whose support the deceased was legally charged, the court before whom the action

plain

1 is pending, or if no action is pending, any court of record, in recognition of the duty
2 and responsibility of a parent to support minor children, shall determine the amount,
3 if any, to be set aside for the protection of such children after considering the age of
4 such children, the amount involved, the capacity and integrity of the surviving
5 spouse, spouse or surviving domestic partner, and any other facts or information it
6 may have or receive, and such amount may be impressed by creation of an
7 appropriate lien in favor of such children or otherwise protected as circumstances
8 may warrant, but such amount shall not be in excess of 50% of the net amount
9 received after deduction of costs of collection. If there are no such surviving minor
10 children, the amount recovered shall belong and be paid to the spouse or domestic
11 partner of the deceased; if no spouse or domestic partner survives, to the deceased's
12 lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the deceased's
13 brothers and sisters. If any such relative dies before judgment in the action, the
14 relative next in order shall be entitled to recover for the wrongful death. A surviving
15 nonresident alien spouse or a nonresident alien domestic partner state-registered
16 under s. 770.05 and minor children shall be entitled to the benefits of this section.
17 In cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's
18 or surviving domestic partner's interest in the amount recovered. If the amount
19 allocated to any child under this subsection is less than \$10,000, s. 807.10 may be
20 applied. Every settlement in wrongful death cases in which the deceased leaves
21 minor children under 18 years of age shall be void unless approved by a court of
22 record authorized to act hereunder.

23 (6) Where the wrongful death of a person creates a cause of action in favor of
24 the decedent's estate and also a cause of action in favor of a spouse, state-registered
25 domestic partner under s. 770.05, or relatives as provided in this section, such

1 spouse, domestic partner, or relatives may waive and satisfy the estate's cause of
2 action in connection with or as part of a settlement and discharge of the cause of
3 action of the spouse, domestic partner, or relatives.

4 **SECTION 115.** 905.05 (title) of the statutes is amended to read:

5 **905.05 (title) Husband-wife and domestic partner privilege.**

6 **SECTION 116.** 905.05 (1), (2), and (3) (a), (b), (c), and (d) of the statutes are
7 amended to read:

8 **905.05 (1) GENERAL RULE OF PRIVILEGE.** A person has a privilege to prevent the
9 person's spouse or former spouse or domestic partner or former domestic partner
10 from testifying against the person as to any private communication by one to the
11 other made during their marriage or domestic partnership. As used in this section,

12 "domestic partner" means a state-registered domestic partner under s. 770.05 plain period

13 **(2) WHO MAY CLAIM THE PRIVILEGE.** The privilege may be claimed by the person
14 or by the spouse or domestic partner on the person's behalf. The authority of the
15 spouse or domestic partner to do so is presumed in the absence of evidence to the
16 contrary.

17 **(3) (a)** If both spouses or former spouses or domestic partners or former
18 domestic partners are parties to the action.

19 **(b)** In proceedings in which one spouse or former spouse or domestic partner
20 or former domestic partner is charged with a crime against the person or property
21 of the other or of a child of either, or with a crime against the person or property of
22 a 3rd person committed in the course of committing a crime against the other.

23 **(c)** In proceedings in which a spouse or former spouse or domestic partner or
24 former domestic partner is charged with a crime of pandering or prostitution.

(d) If one spouse or former spouse or domestic partner or former domestic partner has acted as the agent of the other and the private communication relates to matters within the scope of the agency.

✓ SECTION 117. 949.01 (2) of the statutes is amended to read:

✓ 949.01 (2) "Dependent" means any spouse, state-registered domestic partner under s. 770.05, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse or of state-registered domestic partner under s. 770.05, of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death and includes any child of the victim born after the victim's death.

✓ SECTION 118. 949.06 (1m) (a) of the statutes is amended to read:

✓ 949.06 (1m) (a) In this subsection, "family member" means any spouse, state-registered domestic partner under s. 770.05, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, foster child, treatment foster child, brother, sister, half brother, half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse.

✓ SECTION 119. 971.17 (4m) (a) 2. of the statutes is amended to read:

✓ 971.17 (4m) (a) 2. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

✓ SECTION 120. 971.17 (6m) (a) 2. of the statutes is amended to read:

✓ 971.17 (6m) (a) 2. "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

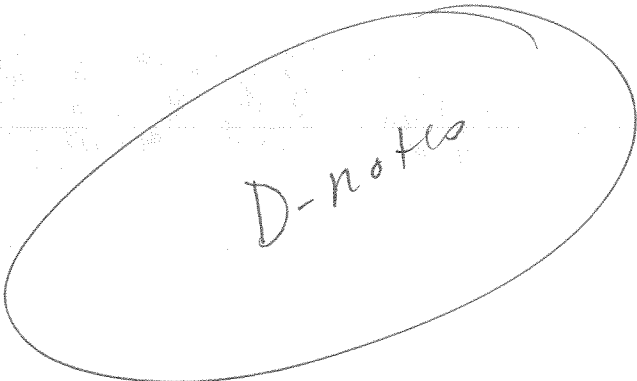
✓ SECTION 121. 980.11 (1) (b) of the statutes is amended to read:

✓ 980.11 (1) (b) "Member of the family" means spouse, state-registered domestic partner under s. 770.05, child, sibling, parent or legal guardian.

SECTION 122. Initial applicability.

✓ (1) REAL ESTATE TRANSFER FEE. The treatment of sections 77.25 (8n) of the
statutes first applies to conveyances recorded on the effective date of this subsection.

(END) ✓



D-notes

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3960/P1ins

ALL:.....
Lbjk

INSERT 8-15

X

1 **SECTION 1.** 40.02 (8) (a) 2. of the statutes, as affected by 2007 Wisconsin Act 131,
2 is amended to read:

3 40.02 (8) (a) 2. In the absence of a written designation of beneficiary, or if all
4 designated beneficiaries who survive the decedent die before filing with the
5 department a beneficiary designation applicable to that death benefit or an
6 application for any death benefit payable, the person determined in the following
7 sequence: group 1, surviving spouse or surviving domestic partner; group 2, children
8 of the deceased participant, employee or annuitant, in equal shares, with the share
9 of any deceased child payable to the issue of the child or, if there is no surviving issue
10 of a deceased child, to the other eligible children in this group or, if deceased, their
11 issue; group 3, parent, in equal shares if both survive; group 4, brother and sister in
12 equal shares and the issue of any deceased brother or sister. The shares payable to
13 the issue of a person shall be determined per stirpes. No payment may be made to
14 a person included in any group if there is a living person in any preceding group, and
15 s. 854.04 (6) shall not apply to a determination under this subsection.

History: 2007 a. 131.

(END OF INSERT 8-15)

X
Section #. 851.17 of the statutes is amended to read:

or surviving domestic partner

851.17 Net estate. "Net estate" means all property subject to administration less the property selected by the surviving spouse under s. 861.33, the allowances made by the court under ss. 861.31, 861.35 and 861.41 except as those allowances are charged by the court against the intestate share of the recipient, administration, funeral and burial expenses, the amount of claims paid and federal and state estate taxes payable out of such property.

History: 1987 a. 27.

End of
INSERT
48-22

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/DAKdn

DAK:.....

Date

Lbjk

To Glenn Wavrunek: ✓

1. Number 19. of your instructions refers to "medical" records, but lists provisions in s. 51.30, stats., for amendment. These provisions deal with "treatment" records, i.e., records of services for mental illness, developmental disability, alcoholism, or drug dependence. In contrast, provisions in current law that deal with "patient health care records" are in ch. 146, stats. For the purposes of this draft, I have amended both treatment record and patient health care record provisions; please let me know if this is not what you want, and I'll redraft. In addition, your instructions seem to reference s. 51.30 (4) (b) 12., stats., which authorizes release of treatment records to correctional officers. I am uncertain how you want this provision amended, so have left it out of the draft for now. ✓

2. With respect to #20. of your instructions, please review the treatment of ss. 50.032 (2) and (2d), 50.033 (2) and (2d), 50.034 (3) (e), 50.035 (2d), 50.04 (2d), 50.36 (3j), 50.942, and 50.95 (1) in this draft. Your instructions referred to "any health care facility." These provisions address each type of health care facility (certified or licensed adult family homes, community-based residential facilities, nursing homes, residential care apartment complexes, hospitals, and hospices) that is regulated by DHFS. Note that medical clinics are not regulated as such by DHFS; do you want a provision that accords spousal privileges of accompanying a patient to a medical clinic for state-registered domestic partners? ✓

Note also that, as drafted, violation of some of these provisions is subject to penalty and violation of others is not. The difference is caused by differing provisions for each type of facility under current law. For example, violation of s. 50.032 (2d), under the provisions of s. 50.032 (6), stats., would carry with it a \$500 fine or imprisonment in the county jail for not more than one year, whereas violation of s. 50.36 (3j) has no penalty that attaches under current law. Do you want all violations to be subject to penalty? Do you want the amounts of the penalties to be identical? If so, what penalty would you prefer? ✓

3. Number 39. of your instructions states, "Spouses, registered domestic partners, children, parents and grandparents of a decedent have priority over the decedent's designated health care agent (such as an unregistered domestic partner) in deciding whether to make anatomical gifts. Sec. 157.06 (3) (a)." Section 157.06 (3) (a) no longer

exists; s. 257.06, stats., was repealed and recreated under 2007 Wisconsin Act 106. The provision that, in part, replaced it is s. 157.06 (9) (a), stats., which sets up a priority of individuals who may make an anatomical gift of the body or part of a decedent. First in priority, under s. 157.06 (9) (a) 1., stats., is an individual's agent under a power of attorney for health care, followed by an individual's spouse, and then numerous other specified persons. I have amended s. 157.06 (9) (a) 2., stats., to include a state-registered domestic partner. Do you want me additionally to change the order of priority as specified in your instructions?

4. In #38. of your instructions, you appear to want to amend s. 157.05, stats., so that a state-registered domestic partner has priority over a "friend" in consenting to an autopsy. However, that provision is not written as a prioritized list of persons; it instead seems to contemplate that of a number of persons, one will assume custody of the body for purposes of burial. Do you want me to establish priority under this section? If so, should a state-registered domestic partner occur after "next of kin," as you propose? Note that, for the sake of consistency, I also included an amendment to s. 157.06 (8) (a), stats., which refers to assuming custody of the body; okay?

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

23960/PI
???dn
PJH:.....
Lbjk

Please note that I have included all of the statutory sections relating to benefits in the legal process that you mentioned in your drafting instructions. Most of these statutory sections relate to treating, throughout the criminal justice process, registered domestic partners the same as "spouses" are treated under current law.

As we discussed, there are many more statutes throughout the crime chapters that offer particular victim status to spouses and other family members. See, for example, s. 940.201, which prohibits a person from battering or threatening a witness in a trial or the witness' family members. Section 940.201 includes "spouse" as a family member. I did not treat this statute or other similar statutes in this draft.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3960/P1dngm

GMM:.....

Date

g LbjK

(3)

Representative Pocan:

Section 109.03 (3) requires an employer to pay a deceased employee's wages to the deceased employee's spouse. Similarly, s. 103.165 (3) requires an employer to pay the bond of deceased employee who is required to be bonded to the deceased employee's spouse. Accordingly, this draft amends s. 103.165 (a) to require an employer to pay the bond of a deceased employee who is required to be bonded to the deceased employee's domestic partner.

There are several other provisions in the employment laws that reference a spouse, so the question is whether you want to add domestic partner to those provisions as well. Those provisions are the following:

1. Section 102.07 (5) (b) and (c) relating to counting the employees of a farmer for purposes of determining coverage of the worker's compensation law.
2. Section 102.80 (4) (a) 1. relating to transfer of the business of an uninsured employer under the worker's compensation law.
3. Section 103.90 (3) (a) 2. and (5) (b) 1. relating to the regulation of migrant labor camps and contractors.
4. Sections 111.32 (5) and (12) and 111.345 relating to employment discrimination based on marital status.

If you would like to conform any of those provisions, please advise.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/P1dnRK

RNK:.....

Date

Lbjk

Current law provides that an owner of a manufactured home must pay a supplemental fee when transferring the title to a manufactured home. The fee is waived with respect to the transfer of a decedent's interest in a manufactured home to his or her surviving spouse. This draft extends the waiver to a state-registered domestic partner. There are also references to surviving spouses in the other manufactured home provisions relating to involuntary transfers in the interest of an owner of a manufactured home. See s. 101.9211 (4) (b) 1., 1m., and 4.✓ Please let me know if you would like the draft to add domestic partners to these provisions as well.✓

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

07-3960insBABdn

BAB:.....

Date

L bjk

ATTN: Glenn Wavrunek ✓

The probate provisions of this draft utilize a definition for "surviving domestic partner" that is based on the definition of "surviving spouse" under s. 851.30. The instructions do not address a situation in which a surviving domestic partner or the decedent had not obtained a valid certificate of termination of a previous domestic partnership with a third person or a final decree or judgment of divorce or an annulment of a previous marriage to a third person prior to registering the domestic partnership with the decedent under created s. 770.05. Would you like to address this issue in this draft?

The instructions do not mention transfers under a will or revocations of provisions in favor of a former domestic partner, and accordingly, this draft does not treat ss. 853.11 (3) or 854.15. Is that your intent?

The instructions in Benefit 28 refer to s. 861.21 (3) and I note that 2005 Wisconsin Act 216 repealed that subsection, which dealt with an intestate estate's interest in a home. It appears that sub. (3) was repealed because it was redundant, as the language in sub. (2) allowing the surviving spouse or domestic partner to petition the court for full ownership in the absence of a governing instrument transferring the decedent's interest in the property to a third person would apply equally to the estate of a decedent whose estate is governed by a will and to a decedent who died intestate. Accordingly, I believe that amending s. 861.21 (2) to add surviving domestic partners adequately addresses the intent in benefit 28. Is this acceptable?

in 2005 Wisconsin Act 216 (d)

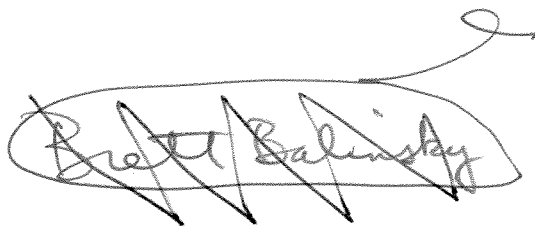
Your request specified in Benefit 29 that a domestic partner is entitled to receive a share of the testator's estate under s. 853.11 (2) (renumbered to s. 853.12) if the testator had a premarital or predomestic partnership will. Although s. 853.12 (3) refers to spouses, I have not added "or domestic partner" to it because it provides an exception to the surviving spouse inheriting under a premarital will if there was an agreement under chapter 766 that the spouse is to have no portion of the testator's estate. Given that the instructions do not mention chapter 766 at all, I have not amended s. 853.12 (3) (d) or any other portion of the probate statutes that refers to marital property issues under chapter 766. Is that your intent?

The draft amends s. 859.25 (1) (g), which regulates payment of claims of a probate estate, and that section is referenced by both s. 342.17 (4) (b) 1.c., which governs the transfer of automobile titles and is amended in this draft, and s. 30.541 (3) (d) 2.a.,

which governs the transfer of boat titles and is not addressed by the drafting instructions. Would you like to amend s. 30.541 (3) (d) 2.a. to include domestic partners as well as spouses?

You have requested that for estates of under \$50,000 in value, that domestic partners be allowed to partake of the estate under the summary settlement of small estates procedures under s. 867.01 and of the procedures under s. 867.03 for transfers by affidavit. Several portions of those two statutes, including ss. 867.01 (3) (am) 4., 867.03 (1g) (c) and (1m) (a), as well as 867.02 (2) (am) 6., concerning assignments of small estates subject to the claims of creditors, refer to situations in which the decedent or spouse received benefits including the family care benefit under s. 46.286, medical assistance under subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685. I have not included domestic partners within those portions of ss. 867.01 to 867.03 because the instructions do not address amending chapters 46 or 49 to add domestic partners to the groups of persons entitled to such benefits. Additionally, I have not changed s. 867.03, as requested in Instruction 34, as no portion of that statute, other than subs. (1g) (c) and (1m) (a), discussed above, mentions spouses or otherwise requires change to apply to domestic partners. Is this acceptable?

The probate statutes are rather complex and I would recommend that you have at least one attorney who specializes in probate law review this draft. Perhaps the State Bar of Wisconsin's probate section could assemble a panel to review the draft and recommend further changes. A computer search of the probate chapters, chs. 851 to 879 using Folio, revealed that the word "spouse" appears 203 times, which includes many sections that are not addressed in this draft. You may wish to perform that Folio search and determine if there are any additional probate provisions you would like addressed in this draft.



Robert P. Nelson DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

LRB-3960/?dn

PJK:.....

Lbjk

Representative Pocan:

As I'm sure you are aware, this bill could be challenged as unconstitutional under article XIII, section 13, of the Wisconsin Constitution, which provides that "(a) legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state." Although a state-registered domestic partnership under this bill is not identical to marriage, the question is whether it is substantially similar to marriage. It has some characteristics in common but obviously differs in many ways. No matter what our opinions might be on that question, the only opinion that matters is a court's if the bill were passed and a legal action initiated to determine its constitutionality. ✓

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3960/P1dn
ALL:bjk:nwn

July 9, 2008

To Glenn Wavrunek:

1. Number 19. of your instructions refers to "medical" records, but lists provisions in s. 51.30, stats., for amendment. These provisions deal with "treatment" records, i.e., records of services for mental illness, developmental disability, alcoholism, or drug dependence. In contrast, provisions in current law that deal with "patient health care records" are in ch. 146, stats. For the purposes of this draft, I have amended both treatment record and patient health care record provisions; please let me know if this is not what you want, and I'll redraft. In addition, your instructions seem to reference s. 51.30 (4) (b) 12., stats., which authorizes release of treatment records to correctional officers. I am uncertain how you want this provision amended, so have left it out of the draft for now.

2. With respect to #20. of your instructions, please review the treatment of ss. 50.032 (2) and (2d), 50.033 (2) and (2d), 50.034 (3) (e), 50.035 (2d), 50.04 (2d), 50.36 (3j), 50.942, and 50.95 (1) in this draft. Your instructions referred to "any health care facility." These provisions address each type of health care facility (certified or licensed adult family homes, community-based residential facilities, nursing homes, residential care apartment complexes, hospitals, and hospices) that is regulated by DHFS. Note that medical clinics are not regulated as such by DHFS; do you want a provision that accords spousal privileges of accompanying a patient to a medical clinic for state-registered domestic partners?

Note also that, as drafted, violation of some of these provisions is subject to penalty and violation of others is not. The difference is caused by differing provisions for each type of facility under current law. For example, violation of s. 50.032 (2d), under the provisions of s. 50.032 (6), stats., would carry with it a \$500 fine or imprisonment in the county jail for not more than one year, whereas violation of s. 50.36 (3j) has no penalty that attaches under current law. Do you want all violations to be subject to penalty? Do you want the amounts of the penalties to be identical? If so, what penalty would you prefer?

3. Number 39. of your instructions states, "Spouses, registered domestic partners, children, parents and grandparents of a decedent have priority over the decedent's designated health care agent (such as an unregistered domestic partner) in deciding whether to make anatomical gifts. Sec. 157.06 (3) (a)." Section 157.06 (3) (a) no longer

exists; s. 157.06, stats., was repealed and recreated under 2007 Wisconsin Act 106. The provision that, in part, replaced it is s. 157.06 (9) (a), stats., which sets up a priority of individuals who may make an anatomical gift of the body or part of a decedent. First in priority, under s. 157.06 (9) (a) 1., stats., is an individual's agent under a power of attorney for health care, followed by an individual's spouse, and then numerous other specified persons. I have amended s. 157.06 (9) (a) 2., stats., to include a state-registered domestic partner. Do you want me additionally to change the order of priority as specified in your instructions?

4. In #38. of your instructions, you appear to want to amend s. 157.05, stats., so that a state-registered domestic partner has priority over a "friend" in consenting to an autopsy. However, that provision is not written as a prioritized list of persons; it instead seems to contemplate that, of a number of persons, one will assume custody of the body for purposes of burial. Do you want me to establish priority under this section? If so, should a state-registered domestic partner occur after "next of kin," as you propose? Note that, for the sake of consistency, I also included an amendment to s. 157.06 (8) (a), stats., which refers to assuming custody of the body; okay?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

Please note that I have included all of the statutory sections relating to benefits in the legal process that you mentioned in your drafting instructions. Most of these statutory sections relate to treating, throughout the criminal justice process, registered domestic partners the same as "spouses" are treated under current law.

As we discussed, there are many more statutes throughout the crime chapters that offer particular victim status to spouses and other family members. See, for example, s. 940.201, which prohibits a person from battering or threatening a witness in a trial or the witness' family members. Section 940.201 includes "spouse" as a family member. I did not treat this statute or other similar statutes in this draft.

Peggy Hurley
Legislative Attorney
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Section 109.03 (3) requires an employer to pay a deceased employee's wages to the deceased employee's spouse. Similarly, s. 103.165 (3) requires an employer to pay the bond of deceased employee who is required to be bonded to the deceased employee's

spouse. Accordingly, this draft amends s. 103.165 (3) to require an employer to pay the bond of a deceased employee who is required to be bonded to the deceased employee's domestic partner.

There are several other provisions in the employment laws that reference a spouse, so the question is whether you want to add domestic partner to those provisions as well. Those provisions are the following:

1. Section 102.07 (5) (b) and (c) relating to counting the employees of a farmer for purposes of determining coverage of the worker's compensation law.
2. Section 102.80 (4) (a) 1. relating to transfer of the business of an uninsured employer under the worker's compensation law.
3. Section 103.90 (3) (a) 2. and (5) (b) 1. relating to the regulation of migrant labor camps and contractors.
4. Sections 111.32 (5) and (12) and 111.345 relating to employment discrimination based on marital status.

If you would like to conform any of those provisions, please advise.

Gordon M. Malaise
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Current law provides that an owner of a manufactured home must pay a supplemental fee when transferring the title to a manufactured home. The fee is waived with respect to the transfer of a decedent's interest in a manufactured home to his or her surviving spouse. This draft extends the waiver to a state-registered domestic partner. There are also references to surviving spouses in the other manufactured home provisions relating to involuntary transfers in the interest of an owner of a manufactured home. See s. 101.9211 (4) (b) 1., 1m., and 4. Please let me know if you would like the draft to add domestic partners to these provisions as well.

Robin N. Kite
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The probate provisions of this draft utilize a definition for "surviving domestic partner" that is based on the definition of "surviving spouse" under s. 851.30. The instructions do not address a situation in which a surviving domestic partner or the decedent had not

obtained a valid certificate of termination of a previous domestic partnership with a third person or a final decree or judgment of divorce or an annulment of a previous marriage to a third person prior to registering the domestic partnership with the decedent under created s. 770.05. Would you like to address this issue in this draft?

The instructions do not mention transfers under a will or revocations of provisions in favor of a former domestic partner, and accordingly, this draft does not treat s. 854.15. Is that your intent?

The instructions in Benefit 28 refer to s. 861.21 (3) and I note that 2005 Wisconsin Act 216 repealed that subsection, which dealt with an intestate estate's interest in a home. It appears that sub. (3) was repealed because it was redundant, as the language in sub. (2) allowing the surviving spouse or domestic partner to petition the court for full ownership in the absence of a governing instrument transferring the decedent's interest in the property to a third person would apply equally to the estate of a decedent whose estate is governed by a will and to a decedent who died intestate. Accordingly, I believe that amending s. 861.21 (2) to add surviving domestic partners adequately addresses the intent in Benefit 28. Is this acceptable?

Your request specified in Benefit 29 that a domestic partner is entitled to receive a share of the testator's estate under s. 853.11 (2) (renumbered to s. 853.12 in 2005 Wisconsin Act 216) if the testator had a premarital or predomestic partnership will. Although s. 853.12 (3) (d) refers to spouses, I have not added "or domestic partner" to it because it provides an exception to the surviving spouse inheriting under a premarital will if there was an agreement under chapter 766 that the spouse is to have no portion of the testator's estate. Given that the instructions do not mention chapter 766 at all, I have not amended s. 853.12 (3) (d) or any other portion of the probate statutes that refers to marital property issues under chapter 766. Is that your intent?

The draft amends s. 859.25 (1) (g), which regulates payment of claims of a probate estate, and that section is referenced by both s. 342.17 (4) (b) 1.c., which governs the transfer of automobile titles and is amended in this draft, and s. 30.541 (3) (d) 2. a., which governs the transfer of boat titles and is not addressed by the drafting instructions. Would you like to amend s. 30.541 (3) (d) 2.a. to include domestic partners as well as spouses?

You have requested that for estates of under \$50,000 in value, that domestic partners be allowed to partake of the estate under the summary settlement of small estates procedures under s. 867.01 and of the procedures under s. 867.03 for transfers by affidavit. Several portions of those two statutes, including ss. 867.01 (3) (am) 4., 867.03 (1g) (c) and (1m) (a), as well as s. 867.02 (2) (am) 6., concerning assignments of small estates subject to the claims of creditors, refer to situations in which the decedent or spouse received benefits including the family care benefit under s. 46.286, medical assistance under subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685. I have not included domestic partners within those portions of ss. 867.01 to 867.03 because the instructions do not address amending chapters 46 or 49 to add domestic partners to the groups of persons entitled to such benefits. Additionally, I have not changed s. 867.03, as requested in Instruction 34, as no portion of that statute, other than subs. (1g) (c) and (1m) (a),

discussed above, mentions spouses or otherwise requires change to apply to domestic partners. Is this acceptable?

The probate statutes are rather complex and I would recommend that you have at least one attorney who specializes in probate law review this draft. Perhaps the State Bar of Wisconsin's probate section could assemble a panel to review the draft and recommend further changes. A computer search of the probate chapters, chs. 851 to 879 using Folio, revealed that the word "spouse" appears 203 times, which includes many sections that are not addressed in this draft. You may wish to perform that Folio search and determine if there are any additional probate provisions you would like addressed in this draft.

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As I'm sure you are aware, this bill could be challenged as unconstitutional under article XIII, section 13, of the Wisconsin Constitution, which provides that "[a] legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state." Although a state-registered domestic partnership under this bill is not identical to marriage, the question is whether it is substantially similar to marriage. It has some characteristics in common but obviously differs in many ways. No matter what our opinions might be on that question, the only opinion that matters is a court's if the bill were passed and a legal action initiated to determine its constitutionality.

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